

**FOLEY  
HOAG** LLP  
ATTORNEYS AT LAW

October 4, 2004

Mary Beth Gentleman  
Boston Office  
617-832-1199  
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**Via E-mail**  
**By Hand**

Ms. Mary L. Cottrell  
Secretary  
Commonwealth of Massachusetts  
Department of Telecommunications & Energy  
One South Station  
Boston, MA 02110

Re: Petition of Boston Edison Company and Commonwealth Electric  
Company for Approvals Relating to the Issuance of Rate Reduction  
Bonds Pursuant to G.L. c. 164, Section 1H, D.T.E. 04-70

Dear Ms. Cottrell:

On behalf of MASSPOWER, I enclose for filing in the above-referenced docket one original and five (5) copies of MASSPOWER's Petition for Leave to Intervene. A copy will also be filed electronically.

Kindly date stamp the enclosed copy of this letter, and return same to our messenger.

Thank you for your attention to this matter.

Sincerely yours,

Mary Beth Gentleman

MBG:jrd  
Enclosure

cc: Joan Foster Evans, Hearing Officer  
Colleen McConnell, Esquire  
Robert N. Werlin, Esquire  
John K. Habib, Esquire  
Mr. Jeffrey W. Bentz

FHBOSTON/1114246.1


**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**D.T.E. 04-70**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing documents upon all persons below in accordance with the requirements of 220 C.M.R. § 1.03(1) and the procedural rules in this docket.

Dated at Boston this 4<sup>th</sup> day of October, 2004.

  
Mary Beth Gentleman  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210  
(617) 832-1199

Mary L. Cottrell, Secretary  
Department of Telecommunications and  
Energy  
One South Station  
Boston, MA 02210

Robert N. Werlin, Esq.  
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Keegan, Werlin & Pabian, LLP  
265 Franklin Street  
Boston, MA 02110

Joan Foster Evans, Hearing Officer  
Department of Telecommunications and  
Energy  
One South Station  
Boston, MA 02110

	)	
Petition of Boston Edison Company and	)	
Commonwealth Electric Company	)	
for Approvals Relating to the Issuance of Rate	)	D.T.E. 04-70
Reduction Bonds Pursuant to G.L. c. 164, § 1H	)	
	)	

MASSPOWER hereby submits to the Department of Telecommunications and Energy (the “DTE”) a petition for leave to intervene as a full party in the above-captioned proceeding (the “Petition”), pursuant to 220 C.M.R. 1.03(1). In support of its Petition, MASSPOWER states as follows:

1. MASSPOWER is a Massachusetts general partnership with a principal place of business at 750 Worcester Street, Indian Orchard, MA 01151.
2. MASSPOWER operates a 240 megawatt gas-fired cogeneration facility in Indian Orchard (the “Facility”).
3. MASSPOWER and Boston Edison Company (“BECO”) are parties to a Power Purchase Agreement dated October 15, 1990 (the “BECO PPA”), as amended, pursuant to which MASSPOWER sells to BECO, and BECO purchases from MASSPOWER, certain electric energy products produced by the the Facility.
4. MASSPOWER and Commonwealth Electric Company (“Commonwealth”) are parties to certain Power Purchase Agreements, dated December 3, 1990, as amended, and February 14, 1992, as amended (together, the “Commonwealth PPAs”), pursuant to which

MASSPOWER sells to Commonwealth, and Commonwealth purchases from MASSPOWER, certain electric energy products produced by the Facility.

5. On June 8, 2004, BECO and Commonwealth (the “Companies”) each executed a Termination Agreement with MASSPOWER (the “Termination Agreement”).

6. Under the Termination Agreement, the BECO PPA and the Commonwealth PPAs (together, the “Existing MASSPOWER PPAs”) terminate on the date on which certain conditions specified in the Termination Agreement have been met. In consideration for the termination of the Existing MASSPOWER PPAs, the Companies are to pay a termination payment to MASSPOWER. Termination Agreement, § 4.1.

7. On July 7, 2004, the Companies petitioned the DTE pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94 and 94A for approval of the Termination Agreement and of the ratemaking treatment relating thereto (the “NSTAR Petition”). The NSTAR Petition is pending in docket D.T.E. 04-61.

8. On August 31, 2004, the Companies petitioned the DTE pursuant to G.L. c. 164, § 1H for approvals relating to issuance of rate reduction bonds (“RRB Petition”). In their RRB Petition, the Companies requested approval of “Financing Orders” approving, *inter alia*, “the securitization (as such term is used in G.L. c. 164, §§ 1G and 1H) through RRBs of reimbursable transition costs amounts of approximately \$675 million consisting of payments associated with the termination of obligations under certain power purchase agreements (the PPAs) between the Companies and MASSPOWER . . . .” RRB Petition at 1.

9. On September 20, 2004, the DTE issued a Notice of Public Hearing and Procedural Conference with respect to the RRB Petition, requiring persons seeking to intervene to file a petition in writing no later than Monday, October 4, 2004.

10. Pursuant to G.L. c. 30A, § 10, the DTE may “allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose as the [DTE] may order.” *See also* 220 CMR 1.03(1)(b).

11. MASSPOWER seeks to intervene because the DTE’s determination and findings in this proceeding will have a direct bearing on MASSPOWER. MASSPOWER is a party to the Existing MASSPOWER PPAs and the Termination Agreement. Implementation of the transaction contemplated under the Termination Agreement is contingent upon receipt of regulatory approvals by various governmental agencies, including the DTE. *See* Termination Agreement, § 2.1(a). The Termination Agreement “is conditioned, in part, on the issuance by the Department of Financing Orders authorizing the securitization of the associated costs.” *Boston Edison*, D.T.E. 04-70, Letter to Secretary Cottrell, dated August 31, 2004, at 1-2. *See also* RRB Petition at 3 and Termination Agreement, § 2.1(a). Without Department approval of the Financing Orders, the Existing MASSPOWER PPAs will remain unchanged and in effect. Unless the DTE approves the Financing Orders, MASSPOWER will remain obligated to deliver to the Companies electric energy products from MASSPOWER and will forego the opportunity to market those products elsewhere. MASSPOWER is thus substantially and specifically affected by the outcome of this proceeding.

12. No other party can adequately represent MASSPOWER’s interest, as MASSPOWER’s legal rights and duties are affected. Moreover, no other party can represent MASSPOWER’s role as a party to the Existing MASSPOWER PPAs and the Termination Agreement.

13. DTE precedent supports the intervention of contracting parties in proceedings affecting their contracts or agreements. *See e.g., Boston Edison Co./Commonwealth Electric Co.*, D.T.E. 98-119/98-126 (1998), at 1 (permitting the Entergy Nuclear Generation Company to intervene in the DTE's review of a Power Purchase Agreement between Boston Edison Company and Entergy); *Canal Electric Co.*, D.T.E. 02-34 (2002), at 1 (permitting FPL Energy Seabrook to intervene in the DTE's review of a purchase and sale agreement between FPL Energy Seabrook and Canal); *Commonwealth Electric Co./Cambridge Electric Light Company*, D.T.E. 04-60 (2004), at 1; *Boston Edison Co. and Commonwealth Electric Co.*, D.T.E. 04-61, Hearing Officer Ruling on Petition to Intervene and Amended Petition for Limited Participant Status, September 30, 2004, at 1.

14. MASSPOWER seeks all the rights of a full party, including the right to file discovery, question witnesses, present testimony and submit briefs.

15. The Petitioners, BECO and Commonwealth, have no objection to MASSPOWER obtaining full intervenor status in this proceeding.

16. MASSPOWER requests that all notices, testimony, pleadings and correspondence pertaining to this proceeding be directed to:

Mary Beth Gentleman  
Andrew D. Fagenholz  
Foley Hoag LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210

WHEREFORE, MASSPOWER respectfully requests that the DTE grant its Petition for Leave to Intervene in this proceeding.

Respectfully submitted,

**MASSPOWER**

By its attorneys,

A handwritten signature in cursive script, reading "Mary Beth Gentleman", written over a horizontal line.

Mary Beth Gentleman

Andrew D. Fagenholz

Foley Hoag LLP

World Trade Center West

155 Seaport Boulevard

Boston, MA 02210

(617) 832-1000

[mgentleman@foleyhoag.com](mailto:mgentleman@foleyhoag.com)

Dated: October 4, 2004